

## (Caption of Case)

Application of Water Head, LLC, for  
Acquisition of Water System at  
Gauley Falls Subdivision,  
Pickens County, and for Expansion of  
Service Area

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

## COVER SHEET

**COPY**  
Posted: 0000  
Date: 11-08  
Time: 8:00  
Docket  
NUMBER: 2008 - 270 - W

(Please type or print)

Submitted by: Robert T. Bockman, EsquireSC Bar Number: 000747Address: McNair Law Firm, P.A.Telephone: (803) 799-980Post Office Box 11390Fax: (803) 753-321Columbia, SC 29211

Other: \_\_\_\_\_

Email: bbockman@mcnair.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

## DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☒ Other: Application

INDUSTRY (Check one) INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply) NATURE OF ACTION (Check all that apply)		
<input checked="" type="checkbox"/> Electric	<input checked="" type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telcom	<input checked="" type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input checked="" type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: -1

RECEIVED

JUL 10 2008

PSCSC  
MAIL/DMS

# McNAIR LAW FIRM, P.A.

ATTORNEYS AND COUNSELORS AT LAW

ROBERT T. BOCKMAN  
rbockman@mcnair.net

www.mcnair.net

THE TOWER AT 1301 GERVAIS  
1301 GERVAIS STREET  
COLUMBIA, SOUTH CAROLINA 29201

POST OFFICE BOX 11390  
COLUMBIA, SOUTH CAROLINA 29211  
TELEPHONE (803) 799-9800  
FACSIMILE (803) 753-3219

July 10, 2008

*Via Law Firm Courier*

Mr. Charles L. A. Terreni  
Chief Clerk and Administrator  
South Carolina Public Service Commission  
Post Office Box 11649  
Columbia, South Carolina 29211

RECEIVED  
JUL 10 11 00 AM  
SC PUBLIC SERVICE  
COMMISSION

**Re: Application of Water Head, LLC, for Acquisition of Water System at Gauley Falls  
Subdivision, Pickens County, and for Expansion of Service Area  
(Docket No. 2008-\_\_\_\_-W)**

Dear Mr. Terreni:

Please find enclosed for filing the original and twenty-five (25) copies of the Application of Water Head, LLC in connection with this matter. By copy of this letter and appended Certificate of Service, I am serving counsel of record. Please return a copy of the Application, with your "filed" stamp, by means of our courier.

Thank you for your time and attention in this matter. If you have any questions with respect to this matter, please do not hesitate to contact me,

Very truly yours,

  
Robert T. Bockman

RTB/yms

Enclosure

cc: Jeffrey M. Nelson, Esquire  
(w/ enc. & via U.S. Mail)

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

Docket No. 2008-\_\_\_\_-W

IN RE: Application of Water Head, LLC, for           )  
Acquisition of Water System at                    )  
Gauley Falls Subdivision,                           )  
Pickens County, and for Expansion of            )  
Service Area    )  
\_\_\_\_\_)

**APPLICATION**

Water Head, LLC, (“Water Head” or “the Company”) applies to this honorable Commission for certain relief in the nature of approval of the acquisition of those assets of Piedmont Water Company, Inc., (“Piedmont”) that comprise the water supply and distribution system used to provide potable water to the Gauley Falls Subdivision, located in Pickens County, South Carolina (“the Utility System”). In addition, Water Head requests the Commission to approve an expansion of the certificated service area of the Utility System to include the subdivision known as “The Rock at Jocassee,” which is adjacent to and adjoining Piedmont’s service area.

In support of the relief for which Water Head applies, Water Head would respectfully state as follows:

1. That the Commission has jurisdiction in this matter pursuant to 26 S.C. Code Ann. Regs. R.103-704 and R.103-743 (Supp. 2007)
2. That Piedmont is a “public utility,” as defined in S.C. Code Ann, §58-5-10(4) (Supp. 2007) by virtue of its water service to customers in the Gauley Falls Subdivision by

means of the Utility System. Piedmont provides water service to 32 residential customers in the Gauley Falls Subdivision.

3. That Water Head is a limited liability corporation, organized and operating pursuant to the laws of the State of South Carolina.

4. That Water Head is presently providing potable water to users at of the Rock at Jocassee development by means of a water supply and distribution system that Water Head owns and operates. Water Head serves a total of 38 users at the Rock at Jocassee, including nineteen single-family residences, eighteen condominiums or “time-share” units, and a clubhouse.

5. That on May 10, 2007, Piedmont and Water Head entered into a “Utility Systems Sale and Purchase Agreement” (“Agreement”) by which Piedmont agreed to transfer, and Water Head agreed to acquire, the Utility System. A copy of the Agreement is attached to this Application as Exhibit A.

6. That Water Head asserts and believes that public convenience and necessity would be best served by approval of the transfer and acquisition of the Utility System.

7. That upon the Commission’s approval of the transfer and acquisition of the Utility System, Water Head intends to interconnect the Utility System with the water system that Water Head operates at the Rock at Jocassee.

8. That Water Head has obtained the approval of the South Carolina Department of Health and Environmental Control for the interconnection of the Utility System and the water system at the Rock at Jocassee.

9. Water Head asserts and believes that the operation of the interconnected systems will enhance system reliability and dependability of the supply and distribution of water to the

customers in the expanded service area. A copy of a proposed Service Area Map for the interconnected systems is attached as Exhibit B.

10. That upon the Commission's approval of the expansion of the service area of the Utility System, Water Head will charge and collect the rates and charges which the Commission has previously approved for Piedmont's water services in the Gauley Falls Subdivision.

11. That upon the Commission's approval of the transfer and acquisition of the Utility System and the expansion of the service area, Water Head will file a Performance Bond for the interconnected systems and expanded service area, as required by 26 S.C. Code Ann. Regs. R. 103.712.3 (Supp. 2007).

12. That upon the Commission's approval of the transfer and acquisition of the Utility System and the expansion of the service area, Water Head will revise its accounting procedures to maintain its books and records to comply with the requirements of 26 S.C. Code Ann. Regs.R.103-719 (Supp. 2007)

13. That upon the Commission's approval of the transfer and acquisition of the Utility System and the expansion of the service area and prior to any application for adjustment of its rates and charges, Water Head will prepare a cost-benefit analysis concerning the possibility of the installation of meters for service to all customers in its system. Prior to filing any application for adjustment in rates and charges, Water Head will submit a copy of the results of such cost-benefit analysis to the Office of Regulatory Staff.

14. That all correspondence with respect to this matter be addressed to the undersigned counsel and to the following:

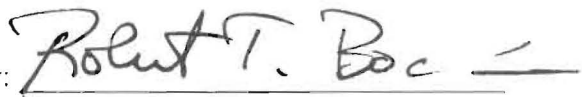
Stan Brown  
President  
Water Head, LLC  
171 Sliding Rock Road  
Pickens, SC 29671

WHEREFORE, Water Head, LLC, respectfully prays unto this honorable Commission:

1. To approve the Agreement between Piedmont Water Company, Inc., and Water Head, LLC, for the transfer and acquisition of the Utility System at Gauley Falls Subdivision; and
2. To approve the expansion of the service area of Water Head, LLC, to include the Rock at Jocassee Subdivision; and
3. For such other and further relief as is just and reasonable.

Respectfully submitted,

McNAIR LAW FIRM, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 799-9800

By: 

Robert T. Bockman  
Attorneys for Water Head, LLC

Columbia, South Carolina

July 10, 2008



THIS AGREEMENT IS SUBJECT TO ARBITRATION  
PURSUANT TO THE UNIFORM ARBITRATION ACT,  
SOUTH CAROLINA CODE OF LAWS  
TITLE 15, CHAPTER 48, 1976, AS AMENDED

UTILITY SYSTEMS SALE AND PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into this the 10th day of May 2007, by and between Piedmont Water Company, Inc., (“Piedmont” or “Seller”) and Water Head, LLC, (“Water Head” or “Purchaser”) (collectively, “the Parties”). The Parties hereby contract and agree as follows:

WITNESSETH

WHEREAS, Piedmont presently owns and operates certain facilities and systems in Pickens County, South Carolina, for the supply and distribution of potable water to Gauley Falls Subdivision (“the Utility System”); and

WHEREAS, Piedmont wishes to sell, and Water Head wishes to purchase, the Utility System in accordance with the terms and conditions set forth in this Agreement;

NOW THEREFORE, for and in consideration of the mutual promises and covenants in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, Piedmont and Water Head hereby agree as follows:

1. PURCHASE AND SALE OF UTILITY SYSTEM.

(a) Subject to the terms and conditions set forth in this Agreement, Piedmont shall sell, transfer and assign to Water Head, for and in consideration of the sum of Ten and no/100 Dollars (\$10.00) and other valuable consideration, the sufficiency of which the Purchaser acknowledges, the facilities, equipment and other improvements which constitute the Utility

System and which are further and specifically described on Exhibit A which is attached to this Agreement and incorporated by reference.

(b) In addition to the facilities, equipment, interest in real property and all improvements described in Exhibit A, Piedmont will sell, transfer and assign to Water Head all instruments of ownership that it possesses relating to the Utility System and all books and records relating to the Utility System.

(c) Piedmont will transfer, and Water Head will accept, the Utility System and all other property under this Agreement in an “as is” condition as of the date of transfer.

(d) Between the date of this Agreement and the date of transfer, Piedmont will be under no obligation to undertake modifications, improvements, or upgrades to the Utility System, except for maintenance for normal wear and tear, unless necessary to comply with duly enacted law or with the applicable requirements of jurisdictional regulatory agencies.

## 2. DATES OF CLOSING AND TRANSFER.

The Parties agree that the transactions described in this Agreement will be closed on or before October 10<sup>th</sup>, 2007, (“Date of Closing”), subject to the approval of any jurisdictional regulatory agencies as provided in paragraph 9 of this Agreement. The Parties agree to transfer the properties subject to this Agreement not less than forty-five (45) days after receipt of all final approvals of jurisdictional regulatory agencies (“Date of Transfer”). The Parties may mutually agree to extend the Date of Closing or Date of Transfer.

## 3. REPRESENTATIONS AND WARRANTIES OF SELLER.

As a material inducement of the Purchaser to enter into and perform its obligations under this Agreement, Seller hereby represents and warrants as follows:



(a) Binding Agreement. This Agreement will constitute a legal, valid and binding obligation of the Seller and will be enforceable against the Seller in accordance with its terms.

(b) Title to Property. Seller represents and warrants that it holds good, marketable title to the Utility System, free of all liens and encumbrances, and free of any beneficial interests of any third parties, and that it has the right to convey the properties to the Purchaser and otherwise perform its obligations under this Agreement.

(c) Brokers. Seller has retained no broker in connection with this transaction and have made no arrangements with respect to any finders fees or commissions upon the consummation of this Agreement.

(d) Disclosure of Liabilities. Seller has disclosed to the Purchaser all liabilities in connection with the Utility System of which the Seller has knowledge.

#### 4. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER.

As a material inducement to the Seller to enter into and perform its obligations under this Agreement, Purchaser hereby represents and warrants as follows:

(a) Binding Agreement. This Agreement will constitute the legal, valid and binding obligation of the Purchaser and will be enforceable against the Purchaser in accordance with its terms.

(b) Brokers. Purchaser has retained no broker in connection with this transaction and has made no arrangements with respect to any finders fees or commissions upon the consummation of this Agreement.

(c) Disclosure of Liabilities. Purchaser acknowledges that it has had the opportunity to fully and completely inspect the Utility System, the books and records in regard to

the Utility System and all enforcement actions pending or threatened against the Department of Health and Environmental Control, the Office of Regulatory Staff, the South Carolina Public Service Commission (collectively "Regulatory Agencies") and any and all litigation which is pending or threatened in regard to the Utility System. Purchaser hereby warrants and represents that it is satisfied with such disclosure and is fully aware of all matters which are pending or threatened against Piedmont.

(d) Continuing Warranties. Purchaser agrees that the foregoing warranties, covenants and representations are of a continuing nature and shall survive the closing.

5. INDEMNIFICATION. Seller agrees to indemnify and hold harmless the Purchaser from and against any claim, liability, deficiency or loss (including reasonable attorneys' fees) suffered by the Purchaser resulting from any misrepresentation or breach by Seller of any of the conditions, representations, warranties or covenants made by Seller herein.

Purchaser agrees to indemnify and hold harmless Seller from and against any claim, liability, deficiency or loss (including reasonable attorneys' fees) suffered by Seller resulting from any misrepresentation or breach by Purchaser of any of the conditions, representations, warranties or covenants made by Purchaser herein.

In case any event shall occur which would entitle any party to a right of indemnification hereunder, the party entitled to indemnification shall promptly notify the indemnifying party, in writing, of any claim or demand which has given rise to a right of indemnification under this Agreement ("Notice of Claim"). Subject to the right to defend such claims, the indemnifying party shall satisfy its obligations under this Paragraph with sixty (60) days after the date of the Notice of Claim.

6. PAYMENT OF EXPENSES.

Except as specifically provide in this Agreement, whether or not the transactions contemplated hereby are consummated, each party shall pay all of his, her or its own expenses (including without limitation, fees or attorneys) contemplated hereby, and the negotiations leading to this Agreement, and the preparations made for carrying same into affect.

7. NOTICES.

All notices to be given by an party to this Agreement or to any other party or parties shall be in writing and shall be given in person or by depositing such notice in the United States mail, postage prepaid (by either registered or certified mail), and addressed as follows unless a change of such address has been given and acknowledged.

TO SELLER: D. R. Williams, III

TO PURCHASER: Stan Brown

Any such notice deposited in the United States mail shall be deemed for all purposes of this Agreement to have been given 48 hours after such deposit.

8. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

All representations, warranties and agreements made by Purchaser and Seller in this Agreement or pursuant hereto shall survive the closing.

9. APPROVALS.

Purchaser shall be responsible for obtaining all necessary approvals in regard to this Agreement from any Regulatory Agency required and Purchaser shall bear the expense of securing such approvals. Seller shall lend its best efforts in obtaining such approvals.

10. ENTIRE AGREEMENT.

This Agreement constitutes the entire understanding among the Parties with respect to the subject matter hereof superseding all negotiations, prior discussions and preliminary agreements. This Agreement may not be amended or terminated except in writing executed by Purchaser and Seller and the Parties hereby waive any right they might otherwise have to effect oral amendments or amendments based upon conduct or practice hereto subsequent to the execution hereof.

11. CHOICE OF LAW.

This Agreement shall be governed in accordance with the laws of the State of South Carolina.

12. HEADINGS.

The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the terms and provisions hereof.

13. COMPUTATION OF DAMAGES.

No reference to pecuniary amounts in this Agreement, whether by way of allocation of the consideration provided for herein or otherwise, shall be construed as an agreement to liquidate damages in the event of default of any of the provisions herein.

14. ARBITRATION OF DISPUTES.

Any dispute among the parties arising from this Agreement shall be subject to binding arbitration. The arbitration shall decide any matter and dispute between the parties to this Agreement and the arbitrator may award attorney's fees, if allowed by law, and any such award may be entered in as a judgment in any court of competent jurisdiction. The arbitration shall be conducted pursuant to the Rules of Commercial Arbitration and American Arbitration Association and the place of arbitration shall be Columbia, South Carolina.

15. COUNTERPARTS.

This Agreement may be signed in counterparts, all such counterparts together continuing the completely executed original Agreement.

IN WITNESS WHEREOF, each party has Signed this Agreement on the dates set forth below:

SIGNATURE BLOCKS

5-07-07

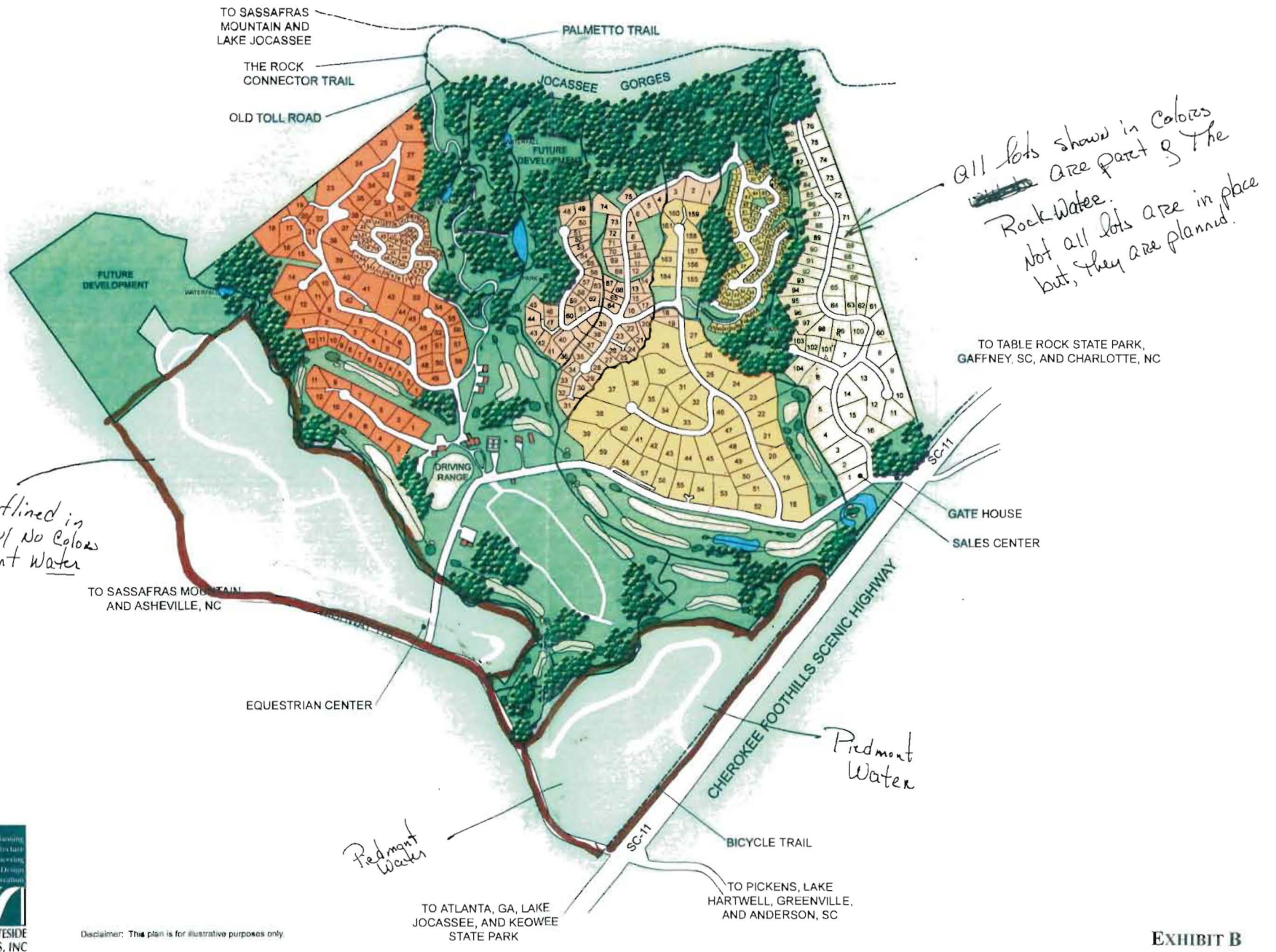
✓ J. R. Williams  
president

John Norman

5-10-07

St. Bar  
for Watershed LLC.





BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

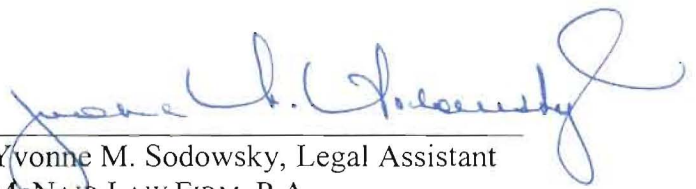
Docket No. 2008-\_\_\_\_-W

IN RE: Application of Water Head, LLC, for )  
Acquisition of Water System at )  
Gauley Falls Subdivision, )  
Pickens County, and for Expansion of )  
Service Area )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I, Yvonne M. Sodowsky, do hereby certify that I have on this date served one (1) copy of the Application of Water Head, LLC, for Acquisition of Water System at Gauley Falls Subdivision, Pickens County, and for Expansion of Service Area on the following counsel of record by causing said copy to be deposited with the United States Postal Service first class postage prepaid and affixed thereto, and email as indicated below:

Jeffrey M. Nelson, Esquire  
S.C. Office of Regulatory Staff  
P.O. Box 11263  
Columbia, SC 29211

  
\_\_\_\_\_  
Yvonne M. Sodowsky, Legal Assistant  
McNAIR LAW FIRM, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 799-9800

July 10, 2008  
Columbia, South Carolina